

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JOHN KAY** : **VIOLATIONS:**

: **42 U.S.C. § 7413(c)(1) (Clean Air Act violations - 7 counts)**

## INFORMATION

**COUNT ONE**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all time material to this Information:

2. In or about August 1999, defendant JOHN KAY purchased an old mill located at 550 Baltimore Pike, Clifton Heights, PA 19082 (“the Old Mill site”) that was formerly used to manufacture yarn. Defendant JOHN KAY purchased the Old Mill site with the intent of converting the factory building into temperature-controlled self-storage units. The Old Mill site included a large, three-story brick building that formerly housed the equipment used to manufacture the yarn. The Old Mill site also included other buildings, including a deteriorated wood building, a boiler house, a dye house and four residential houses. The main brick building at the Old Mill site contained a significant amount of asbestos, a material that was once commonly used to insulate heating pipes.

3. Beginning as early as about August 1999, defendant JOHN KAY hired individuals not named in this information to clean out the various buildings located at the Old Mill site. These individuals were day laborers hired from the local labor pool. From about August 1999 to about June 2000, defendant JOHN KAY personally directed these day laborers to clean out the main factory building at the Old Mill to prepare it for conversion to house individual storage units. This clean up process initially focused on the removal of the old yarn-manufacturing machines and other debris, but later included the removal of thousands of feet of asbestos-covered heating pipes.

4. Asbestos is classified as a “hazardous air pollutant” under the Clean Air Act. See 42 U.S.C. § 7412(b)(1); 40 C.F.R. § 61.01(a). Asbestos is a known human carcinogen, and it is well-documented that inhalation of asbestos fibers can result in various diseases, including mesothelioma (a cancer of the chest and abdominal lining) and asbestosis (a debilitating lung disease).

5. Recognizing that the renovation or demolition of buildings containing asbestos is a major source of airborne asbestos, the United States Environmental Protection Agency (“EPA”) closely regulates activities that disturb asbestos. See 40 C.F.R. §§ 61.140-157 (subpart M).

6. Defendant JOHN KAY personally directed the asbestos removal work at the Old Mill site, including specifically directing which pipes the workers were to cut down. Defendant JOHN KAY further rented handheld, gasoline-powered saws for the workers to use to cut down the asbestos-covered heating pipes.

7. None of the workers were certified or trained safely to remove asbestos

materials. During the renovation, some of the workers occasionally wore paper dust masks. Generally, however, none of the workers wore any equipment that protected them from the airborne asbestos fibers during the renovation activity.

8. In removing the pipes, the workers did not wet the asbestos, but simply cut through the insulation on the pipes dry. Also, after cutting the pipes, the workers did not carefully lower them to the ground, but rather let them fall to the ground. Both of these actions resulted in the generation of airborne dust containing asbestos fibers. After cutting down the pipes, the workers often stripped off the asbestos from the pipes so that pipe metal could be sold for scrap.

9. The workers dumped the asbestos – along with other construction waste material – into dumpsters and into debris piles outside. Eventually, the workers cleaned up the Old Mill site of almost all asbestos material. All of these actions were conducted pursuant to the instructions of defendant JOHN KAY.

10. On or about April 21, 2000, an EPA Inspector inspected the outside of the Old Mill site, and found numerous piles of construction waste and other debris containing suspected asbestos materials. The EPA Inspector took samples of the suspected asbestos-containing materials, and submitted them for testing. Later analysis showed that the pipe insulation debris tested positive for asbestos fibers.

11. Several days later, on or about April 26, 2000, the EPA Inspector inspected the outside of the Old Mill and again saw the same piles of construction waste and debris containing suspected asbestos. The EPA Inspector also inspected the inside of the building, and found disturbed suspected asbestos-containing materials on the ground. The EPA

Inspector took samples of the suspected asbestos-containing materials from both inside and outside of the buildings, and submitted them for testing. Later analysis showed that the samples tested positive for asbestos fibers.

12. On or about May 17, 2000, EPA Inspector Ponak inspected the outside of the Old Mill and again saw the same piles of construction waste and debris containing suspected asbestos.

13. Between on or about May 17, 2000 and on or about June 21, 2000, EPA Inspector Ponak informed defendant JOHN KAY that KAY was required to clean up the asbestos located at the Old Mill site in compliance with applicable law.

14. On or about June 20, 2000, defendant JOHN KAY informed the EPA that he had retained The Prime Group Associates (“Prime”) to perform asbestos remediation, scheduled to be conducted on June 24, 2000.

15. On or about June 21, 2000, the EPA Inspector inspected the Old Mill and saw that almost all of the construction waste and debris containing the asbestos – both inside and outside of the buildings – had been cleaned up and removed.

#### **THE CLEAN AIR ACT**

16. The Clean Air Act authorizes the EPA to establish emission standards for hazardous air pollutants. An air pollutant is hazardous if, in the judgment of the EPA, it presents, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic). 42 U.S.C. § 7412(b)(2). The EPA has

designated asbestos as a hazardous air pollutant. 42 U.S.C. § 7412(a)(6) & (b) and 40 C.F.R. § 61.01(a).

17. The EPA has promulgated work practice standards establishing certain procedures that must be followed when dealing with hazardous air pollutants, such as asbestos. These work practice standards govern the demolition or renovation of certain asbestos-containing facilities and the handling of asbestos-containing waste. 40 C.F.R. §§ 61.145, 61.150.

18. The asbestos work practice standards apply to demolition and renovation activities involving the disruption or disturbance of a certain minimum threshold amount of regulated asbestos-containing material (“RACM”). Asbestos-containing material constitutes RACM if it is either friable, or highly likely to become friable. Friable asbestos material includes any material that contains more than one-percent asbestos that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure. The asbestos-containing material at the Old Mill site constituted RACM.

19. “Renovation” activity includes “the altering of a facility or one or more facility components in any way, including the stripping or removal of RACM from facility components.” 40 C.F.R. § 61.141. The actions of defendant JOHN KAY constituted “renovation activity.”

20. The term “facility” includes any institutional, commercial, public, industrial, or residential structure, installation, or building. 40 C.F.R. § 61.141. The factory building at the Old Mill site constituted a “facility.” The term “facility component” includes any part of the facility. 40 C.F.R. § 61.141. The asbestos-covered heating pipes in the factory building at the Old Mill site constituted “facility components.”

21. An “owner or operator” of a renovation or demolition activity includes any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated. 40 C.F.R. § 61.141. Defendant JOHN KAY was the owner and operator of the Old Mill site.

22. The asbestos work practice standards promulgated by the EPA apply to any renovation activity where the combined amount of RACM to be stripped, removed, dislodged, cut and similarly disturbed is at least 260 linear feet on pipes or at least 160 square feet on other facility components. 40 C.F.R. §§ 61.145(a)(1)(i) & (a)(4)(i). The renovation activity at the Old Mill site stripped, removed, dislodged, cut and similarly disturbed at least 260 linear feet of RACM on pipes or at least 160 square feet of RACM on other facility components.

23. The asbestos work practice standards require, among other things, the following:

- a. The owner or operator of a renovation operation must give at least 10-days written notice of intent to perform any renovation operation (40 C.F.R. § 61.145(b));
- b. The owner or operator of a renovation operation must follow prescribed work standards (i.e., wetting the asbestos and carefully lowering it to the ground without disturbing the RACM) for removing the asbestos (40 C.F.R. § 61.145(c)(2));
- c. The owner or operator of a renovation operation must adequately wet the asbestos during the stripping operation (40 C.F.R. § 61.145(c)(3));

- d. The owner or operator of a renovation operation must keep the asbestos wet while awaiting proper disposal (40 C.F.R. § 61.145(c)(6));
- e. The owner or operator of a renovation operation must not discharge visible emissions into the outside air during the collection of the asbestos (40 C.F.R. § 61.150(a));
- f. The owner or operator of a renovation operation must dispose of the asbestos as soon as practicable at an approved location (40 C.F.R. § 61.150(b)); and
- g. The owner or operator of a renovation operation must employ on site at least one person trained in the provisions of the asbestos regulations and the means of complying with them (40 C.F.R. § 61.145(c)(8)).

24. Defendant JOHN KAY did not comply with these work practice standards.

Specifically, defendant JOHN KAY:

- a. did not give the EPA at least 10-days written notice of his intent to perform any renovation operation;
- b. did not follow prescribed work standards for removing the asbestos during the renovation activity;
- c. did not adequately wet the asbestos while stripping the asbestos;
- d. did not keep the asbestos wet while awaiting proper disposal;
- e. discharged visible emissions into the outside air during the

collection of the asbestos;

- f. did not dispose of the asbestos as soon as practicable at an approved location; and
- g. did not employ on site at least one person trained in the provisions of the asbestos regulations and the means of complying with them.



25. From in or about April 2000 to in or about June 2000, in the Eastern District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with work practice standards requiring an owner and operator of renovation activity to provide the Administrator of the EPA with written notice of his intention to perform renovation activity at the Old Mill site at least 10 business days before the beginning of asbestos stripping and removal work, and any other that would break up, dislodge and similarly disturb asbestos material.

In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.145(b).

**COUNT TWO**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with work practice standards requiring an owner and operator of renovation activity adequately to wet all RACM exposed during cutting and disjoining operations, and then carefully to lower each unit and section to the floor and to ground level without dropping, throwing, sliding and otherwise damaging and disturbing the RACM.

In violation of Title 42, United States Code, Section 7413, and Title 40, Code of Federal Regulations, Section 61.145(c)(2).

**COUNT THREE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with work practice standards requiring an owner and operator of renovation activity adequately to wet RACM during the stripping operation.

In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.145(c)(3).

**COUNT FOUR**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with work practice standards requiring an owner and operator of renovation activity adequately to wet RACM and ensure that it remains wet until collected and contained and treated in preparation for disposal in accordance with applicable law, and carefully to lower the material to the ground and floor, not dropping, throwing, sliding, and otherwise damaging and disturbing the material.

. In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.145(c)(6).

**COUNT FIVE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with waste disposal standards requiring an owner and operator of renovation activity to discharge no visible emissions into the outside air during the collection, processing, packaging and transporting of the asbestos-containing waste material generated at the Old Mill site.

In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.150(a).

**COUNT SIX**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with waste disposal standards requiring an owner and operator of renovation activity to deposit the asbestos-containing waste material at an approved location as soon as is practical.

In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.150(b).

**COUNT SEVEN**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 24 of this information are incorporated by reference.
2. From in or about April 2000 to in or about June 2000, in the Eastern

District of Pennsylvania, defendant

**JOHN KAY,**

the owner and operator of renovation activity at the Old Mill site, where the combined amount of RACM stripped, removed, dislodged, cut and similarly disturbed was at least 260 linear feet on pipes, or at least 160 square feet on other facility components, directed the removal and stripping of asbestos-covered heating pipes and other facility components, knowing that the heating pipe insulation contained asbestos, without complying with work practice standards providing that no RACM shall be stripped, removed, and otherwise handled and disturbed at a facility regulated by this section unless there is present at the site at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of the work practice regulations and the means of complying with them.

In violation of Title 42, United States Code, Section 7413 and Title 40, Code of Federal Regulations, Section 61.145(c)(8).

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**PATRICK L. MEEHAN  
UNITED STATES ATTORNEY**